IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 845 OF 2007

The South Indian Co-op
Bank Ltd. ..Applicant

Vs.

1. The State of Maharashtra
and anr. ..Respondents

Mr. M. Seelan and Mr. M.E. Joe for applicant.
Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 13, 2007.

P.C.:

1. Heard the learned counsel for the applicant-bank which is seeking leave to appeal under Section 378 (4) of Cr.P.C. against the order of acquittal passed by the learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai in C.C. No.222/SS/04 filed under Section 138 of the Negotiable Instruments Act, 1881.

2. As per the Bank, the accused - present

respondent no.2 had issued cheque bearing No.132136 dated 6/1/2004 drawn on the Bank of Madura Ltd., Chembur Branch in the sum of Rs.1,20,00,000/- in its favour and the cheque was issued by the accused on behalf of M/s. N.N. Weaving Mill but in his capacity as Proprietor. When the cheque was submitted for encashment, it was returned as dishonoured on 20/1/2004. A legal notice dated 13/2/2004 issued to and received by the accused did not result in payment of the amount to the complainant and, therefore, the complaint under Section 138 of N.I. Act came to be filed. The complainant stepped in the witness box himself and so did the accused. It was the defence of the accused that his firm was granted cash credit facility initially and subsequently it was converted into the term loan facility of 120 months on 24/4/2003. As per the Bank, such a facility was granted subject to the execution of documents by the accused and as the accused failed to execute the documents, it remained as cash credit facility.

3. Coming to the subject cheque, the trial court noted the defence of the accused namely that the

cheque was dated 18/12/2002, it could not have been submitted for encashment any time after six months therefrom and the complainant-bank without the knowledge of the accused corrected the date of the cheque as 6/1/2004 and submitted it for encashment for which he was not liable, more so when it was without his knowledge or permission. The trial court noted that the cheque was signed by the accused on three different places but in the same ink and, therefore, it drew a presumption that the accused put all these three signatures on 18/12/2002 and for the correction of dated to 6/1/2004 he had not signed. The trial court referred to the admissions given by PW 1 in his cross-examination that the cheque was dated 18/12/2002 and the date was corrected subsequently to 6/1/2004 and in a different ink by him. The trial court, therefore, referred to the decision of the Kerla High Court in the case of Ramchandran vs. K. Dineshan [2005 ALL MR (Cri) Journal 177] and the decision of this court in the case of Credential Finance Ltd. vs. State of Maharashtra [2000 (3) Mh.L.J. 544] and held that the subject cheque had lost its character as a negotiable instrument after the expiry of six months

from 18/12/2002. This view taken by the trial court cannot be termed as perverse or illegal having regards to the admissions given by the PW 1 in his cross-examination before the trial court.

4. There is no case made out that the reasoning set out by the trial court in support of the order of acquittal requires reconsideration at the hands of this court.

5. Hence, leave to appeal is refused and the application is rejected.

(B.H. Marlapalle,J.)